

DEPARTMENT OF LABOR AND INDUSTRY
STATE OF MONTANA

In the matter of the adoption of New) NOTICE OF PUBLIC HEARING ON
Rules I through III relating to) PROPOSED ADOPTION
licensure of professional employer)
organizations)

TO: All Concerned Persons

1. On January 16, 2014, at 1:00 p.m., a public hearing will be held in the first floor conference room, Room 104, of the Walt Sullivan Building, 1315 E. Lockey Avenue, Helena, Montana, to consider the proposed adoption of the above-stated rules.

2. The Department of Labor and Industry (department) will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the department no later than 5:00 p.m., on January 9, 2014, to advise us of the nature of the accommodation needed. Please contact the Employment Relations Division, Department of Labor and Industry, Attn: Peter Van Nice, P. O. Box 8011, Helena, Montana 59604-8011; telephone (406) 444-0566; Montana Relay 1 (800) 253-4091; TDD (406) 444-5549; fax (406) 444-7710; or email to PVanNice@mt.gov.

3. GENERAL STATEMENT OF REASONABLE NECESSITY: The Montana Professional Employer Organizations and Groups Licensing Act (Act) was initially enacted by Senate Bill 264 in 1995. Amendments to the Act were passed in both 2005 (Senate Bill 373), and in 2007 (House Bill 72). In the years since these bills were enacted, the department has received questions and inquiries regarding the PEO licensure process and requirements as outlined in the statutes. The department notes that the only time the PEO application process gets bogged down is when applicants do not understand the process or necessary forms, and fail to follow instructions. These rules are a culmination of department effort and input from stakeholders since the Act was enacted in 1995.

Accordingly, the department determined it is reasonably necessary to propose these new rules now to clarify the application process for new and renewal applicants and to increase compliance with the Act as amended in 2005 and 2007. Where additional specific bases for a proposed action exist, the department will identify those reasons immediately following that rule.

4. The proposed new rules provide as follows:

NEW RULE I NEW APPLICATIONS - DENIALS (1) To be eligible to receive a license, a professional employer organization or group (PEO) must submit all application materials required by 39-8-202 and 39-8-207, MCA.

(2) Upon receipt of an incomplete application from a newly applying PEO, the department will inform the applicant in writing that the PEO has 90 days from the date that the original application was received to submit a completed application.

(a) If a complete application is not received within the 90-day deadline, the application will be denied.

(b) An extension of the application process may be requested in writing by a controlling person and will be evaluated on a case-by-case basis.

AUTH: 39-8-201, MCA

IMP: 39-8-202, 39-8-203, 39-8-207, MCA

REASON: It is reasonably necessary to adopt this new rule to clearly delineate the 90-day application process for a new PEO. The department has found the period of time from application date to when the final information is received from the PEO often unreasonably exceeds 90 days. During this time, the PEO may be operating in Montana under a provisional license and often without a sense of urgency in getting final approval. The department concluded that defining a set 90-day period will provide more control over the process and the documentation submitted by the PEO applicant.

NEW RULE II RENEWAL APPLICATIONS - DENIALS (1) The department will send a renewal application approximately 90 days prior to the renewal date. A completed renewal application must be received by the department 30 days prior to the expiration date of the license.

(a) If a completed renewal application is not received 30 days prior to the expiration date, the existing license will automatically expire and a subsequently received renewal application will not be renewed.

(b) Upon the expiration and nonrenewal of a license under (a), the applicant is subject to the provisions of 39-8-206(2)(b), MCA.

(c) Any application materials received under (a) will be treated as a new application and will be subject to the provisions of 39-8-203(7), MCA.

(d) Upon the nonrenewal of a renewal application, the department shall send a letter to all client companies of the PEO notifying the client companies the PEO renewal application has been denied.

AUTH: 39-8-201, MCA

IMP: 39-8-202, 39-8-203, 39-8-204, 39-8-206, MCA

REASON: The department is adopting New Rule II to clarify that under the statutory scheme in Title 39, chapter 8, failure to submit a renewal application 30 days prior to the expiration date requires the department to deny the renewal application. The department believes that licensed PEOs should be able to comply with the renewal application requirements, given that the renewal application will be sent 90 days prior to the due date.

It is reasonably necessary to clarify in (1)(d) the department's duty to ensure a PEO's client companies are notified when the department denies the PEO's renewal application. The court in *MP Livestock Trust/Perry Polzin Trucking v. DLI/UEF*, 2005

MTWCC 6, WCC No. 2004-1109, concluded that the department has a duty to ensure client companies are informed when a license is revoked, suspended, or not renewed, because the department knows that client companies would detrimentally rely on the existence of valid workers' compensation coverage by virtue of a valid PEO license.

NEW RULE III SUSPENSION, REVOCATION, NONRENEWAL - APPEAL - IMMEDIATE CESSATION OF OPERATIONS (1) Upon the suspension or revocation of a regular or provisional license, or upon the denial of a renewal application, the department shall notify all client companies by mail that the PEO's license has been suspended, revoked, or not renewed.

(2) The PEO may appeal the suspension, revocation, or nonrenewal by submitting a written request within 30 days of receiving the notice of suspension, revocation, or denial. The appeal must be submitted to the department's hearings bureau.

(3) When the suspension or revocation of a provisional or regular license is appealed, the department may order an immediate cessation of operations if:

- (a) the PEO does not maintain a valid workers' compensation policy; or
- (b) other circumstances determined by the department warrant immediate cessation of operations.

AUTH: 39-8-201, MCA

IMP: 39-8-203, 39-8-204, 39-8-206, MCA

REASON: It is reasonably necessary to adopt New Rule III and clarify that the department has a duty to ensure a PEO's client companies are notified when the department suspends or revokes a current license, or when it denies a PEO's renewal application. The court in *MP Livestock Trust/Perry Polzin Trucking v. DLI/UEF*, 2005 MTWCC 6, WCC No. 2004-1109, concluded that the department has a duty to ensure the client companies are informed when a license is revoked, suspended, or not renewed, because the department knows that client companies would detrimentally rely on the existence of valid workers' compensation coverage by virtue of a valid PEO license.

The department is clarifying in (3) those circumstances under which the department may order the immediate cessation of a PEO's operations, including when a PEO has no valid workers' compensation policy in place.

5. Concerned persons may present their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to Brett Wall, Workers' Compensation Regulations Bureau, Employment Relations Division, Department of Labor and Industry, P. O. Box 8011, Helena, Montana 59624-8011; 0513, by facsimile to (406) 444-3465; or by e-mail to brwall@mt.gov, and must be received no later than 5:00 p.m., January 24, 2014.

6. An electronic copy of this notice of public hearing is available through the department's web site at <http://dli.mt.gov/events/calendar.asp>, under the Calendar of Events, Administrative Rules Hearings section. The department strives to make the

electronic copy of this notice conform to the official version of the notice, as printed in the Montana Administrative Register, but advises all concerned persons that in the event of a discrepancy between the official printed text of the notice and the electronic version of the notice, only the official printed text will be considered. In addition, although the department strives to keep its web site accessible at all times, concerned persons should be aware that the web site may be unavailable during some periods, due to system maintenance or technical problems, and that technical difficulties in accessing or posting to the e-mail address do not excuse late submission of comments.

7. The department maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this board. Persons who wish to have their name added to the list shall make a written request that includes the name, e-mail, and mailing address of the person to receive notices and specifies that the person wishes to receive notices regarding all Department of Labor and Industry administrative rulemaking proceedings or other administrative proceedings. The request must indicate whether e-mail or standard mail is preferred. Such written request may be sent or delivered to the Department of Labor and Industry, attention: Mark Cadwallader, 1315 E. Lockey Avenue, P.O. Box 1728, Helena, Montana 59624-1728, faxed to the department at (406) 444-1394, e-mailed to mcadwallader@mt.gov, or made by completing a request form at any rules hearing held by the department.

8. The bill sponsor contact requirements of 2-4-302, MCA, apply and have been fulfilled. The primary bill sponsors were contacted as follows: Senator Jeff Essmann (Senate Bill 373), by regular mail on July 28, 2005; and Representative Kendall Van Dyk (House Bill 72), by regular mail on April 5, 2007.

9. With regard to the requirements of 2-4-111, MCA, the board has determined that the adoption of NEW RULES I through III will not significantly and directly impact small businesses.

Documentation of the department's above-referenced determination(s) is available upon request to Brett Wall, Workers' Compensation Regulations Bureau, Employment Relations Division, Department of Labor and Industry, P. O. Box 8011, Helena, Montana 59624-8011; 0513; telephone (406) 444-0776; facsimile (406) 444-3465; or e-mail to brwall@mt.gov.

10. The department's Hearings Bureau has been designated to preside over and conduct the hearing.

/s/ DARCEE L. MOE
Darcee L. Moe
Rule Reviewer

/s/ PAM BUCY
Pam Bucy, Commissioner
DEPARTMENT OF LABOR AND INDUSTRY

Certified to the Secretary of State December 16, 2013.